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Attorneys for Defendant Apple Inc.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

OHIO CASUALTY INSURANCE
CORPORATION, as Subrogee of
IRIEN JENNINGS DBA
TOMFOOLERY PIZZA PUB,

Plaintiff,

vs.

APPLE INC.,

Defendant.

NO. _____

NOTICE OF REMOVAL

(FROM THE SUPERIOR
COURT OF THE STATE OF
WASHINGTON FOR LINCOLN
COUNTY, CAUSE NO. 19-2-
00024-5)

Clerk's Action Required

**TO: The Judges and Clerk of the United States District Court in and
for the Eastern District of Washington at Spokane**

AND TO: Ohio Casualty Insurance Corporation and Its Counsel

PLEASE TAKE NOTICE that Defendant Apple Inc. ("Apple"), by and
through its undersigned counsel, hereby removes the above-entitled action from
the Superior Court of the State of Washington, in and for the County of Lincoln, to

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1 this Court, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. As its basis for
2 removal, Apple states:

3 **BACKGROUND**

4 1. On or about April 19, 2019, Plaintiff Ohio Casualty Insurance
5 Corporation, as Subrogee of Irien Jennings d/b/a Tomfoolery Pizza Pub
6 (“Plaintiff”), commenced this action by filing a Complaint in the Superior Court of
7 the State of Washington, in and for the County of Lincoln, under Cause Number
8 19-2-00024-5 (“Lincoln County Matter”). A true and correct copy of Plaintiff’s
9 Complaint is attached hereto as **Exhibit A**.

10 2. The Complaint alleges that Plaintiff’s insured sustained property
11 damage on or about August 27, 2016 as a result of a fire that Plaintiff alleges was
12 caused by a lithium battery in an Apple MacBook Pro computer. *See Plaintiff’s*
13 *Complaint* at ¶¶ 3.2 to 3.4.

14 3. Plaintiff’s insured was located at 101 NW Main Street in Wilbur,
15 Lincoln County, Washington. *See Plaintiff’s Complaint* at ¶ 3.1.

16 4. Apple was served with the Summons and Complaint on May 2, 2019.

17 5. Apple is timely filing this Notice of Removal within thirty days of
18 service of the Complaint in the Lincoln County Matter. See 28 U.S.C.
19 § 1446(b)(1). Moreover, one year has not expired since the commencement of the
20 Lincoln County Matter.

21 6. This Court has jurisdiction over this Lincoln County Matter under 28
22 U.S.C. § 1332, *et seq.*

23 7. Venue is proper in this Court because the Superior Court of the State
24 of Washington, in and for the County of Lincoln, where the Lincoln County
25 Matter was originally filed, is in this District. See 28 U.S.C. § 1446(a).

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8. The following pleadings constitute all of the process, pleadings and orders received by Apple in this action up to the present time:

- Summons;
- Complaint for Damages; and,
- Notice of Appearance for Defendant Apple Inc.

True and correct copies of the identified pleadings are attached as **Exhibit A** to Tompkins Decl.

9. Pursuant to 28 U.S.C. § 1446(d), Apple is serving a Notice of Removal to Plaintiff along with a copy of this Notice of Removal upon Plaintiff's counsel. A true and correct copy of the Notice of Removal to Plaintiff is attached hereto as **Exhibit B**. Additionally, Apple is filing a Notice to State Court of Removal with the Superior Court of the State of Washington, in and for the County of Lincoln, along with a copy of this Notice of Removal. A true and correct copy of the Notice to State Court of Removal is attached hereto as **Exhibit C**.

10. A jury demand has not yet been filed in the Lincoln County Matter. Pursuant to FRCP 81(c), Apple will file a jury demand within 14 days of the filing of this Removal.

DIVERSITY OF CITIZENSHIP

11. The diversity of citizenship requirement under 28 U.S.C. § 1332(a) is met.

12. Upon information and belief, Plaintiff Ohio Casualty Insurance Corporation does not exist as a registered entity with the Washington Secretary of State or Washington Department of Revenue as a duly organized or registered corporation.

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1 13. Upon information and belief, The Ohio Casualty Insurance Company
2 is and was at all relevant times hereto a corporation duly organized and registered
3 under the laws of the state of New Hampshire with its principal place of business
4 in Massachusetts. Accordingly, Plaintiff is a citizen of the states of New
5 Hampshire and Massachusetts. See 28 U.S.C. § 1332.

6 14. Upon information and belief, Ohio Casualty Insurance Company's
7 insured, Irien Jennings d/b/a Tomfoolery Pizza Pub, is a resident and citizen of the
8 state of Washington.

9 15. Defendant Apple is a citizen of the state of California. Apple is now
10 and was at the time of commencement of this action, an entity incorporated under
11 the laws of California with its principal place of business in the state of California.
12 See 28 U.S.C. § 1332.

13 16. Apple is the only named defendant in this action and, therefore, all
14 defendants appearing in the action agree to removal.

15 17. Diversity of citizenship exists under 28 U.S.C. § 1332 because the
16 parties are citizens of different states.
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AMOUNT IN CONTROVERSY

18. Removal is proper under 28 U.S.C. § 1332(a) as, upon information and belief, the amount in controversy exceeds \$75,000.00. See 28 U.S.C. § 1332.¹ A reasonable person would conclude that Plaintiff seeks damages in excess of \$75,000 bases on the allegations of damages in Plaintiff's Complaint.

19. Moreover, in correspondence between the parties, Plaintiff has indicated that it has incurred losses in the incident giving rise to the Lincoln County Matter for which it seeks recovery in excess of \$75,000. *See Excerpt of Plaintiff's Insured's Sworn Statement in Proof of Loss*, attached as **Exhibit D** to Tompkins Decl.

20. When a complaint fails to state an amount-in-controversy, courts have considered correspondence between parties, including demand letters, as sufficient to support the amount-in-controversy requirement for removal based on diversity jurisdiction. *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002) (affirming denial of motion to remand, finding amount in controversy requirement established where settlement letter sought \$100,000 in compensation); *Clanan v. USAA Cas. Ins. Co.*, 2014 WL 3818101, *3 (W.D. WA. Aug. 4, 2014) (holding that demand letter describing damages and seeking \$100,000 "establishe[d] by a preponderance of the evidence that the amount in controversy exceeds \$75,000.").

¹ In making its good faith calculations of the amounts being sought by the Plaintiff's Complaint, Apple does not concede or admit, in any fashion, that any claims for such amounts, or any amounts, have legal or factual merit, and reserves all rights and defenses to such claims.

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1 21. Given that Plaintiff's insured's Sworn Statement in Proof of Loss
2 seeks an amount that exceeds the jurisdictional limit, this matter meets the
3 jurisdictional requirement for diversity and is removable pursuant to
4 28 U.S.C. § 1332.

5 22. A Notice of Removal to Plaintiff and a Notice to State Court of
6 Removal will be served on Plaintiff's counsel and filed in the Superior Court of
7 the State of Washington, in and for the County of Lincoln in the Lincoln County
8 matter pursuant to 28 U.S.C. § 1446.

9 23. Defendant Apple reserves the right to amend or supplement this
10 Notice of Removal and further reserves the right to assert any and all defenses and
11 objections.

12 WHEREFORE, Apple effects the removal of the Lincoln County Matter
13 from the Superior Court of the State of Washington, in and for the County of
14 Lincoln to the United States District Court for the Eastern District of Washington,
15 Spokane.

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1 DATED this 31st day of May, 2019.

2 BETTS, PATTERSON & MINES, P.S.

3 By /s Christopher W. Tompkins

4 By /s Natasha A. Khachatourians

5 Christopher W. Tompkins, WSBA #11686

6 Natasha A. Khachatourians, WSBA #42685

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14 E-mail: nkhachatourians@bpmlaw.com

15 Attorneys for Defendant Apple Inc.

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CERTIFICATE OF SERVICE

I, Karen L. Pritchard, hereby certify that on May 31, 2019, I electronically filed the following:

- **Notice of Removal to the U.S. District Court for the Eastern District; and**
- **Certificate of Service.**

with the Court using the CM/ECF system which will send notification of such filing to the following:

Counsel for Plaintiff Ohio Casualty Insurance Corporation

Kevin F. Smith

Law Offices of Mark Dietzler

1001 4th Ave Ste 3300

Seattle, WA 98154-1101

kevinf.smith@libertymutual.com

DATED this 31st day of May, 2019.

s/ Karen L. Pritchard

Karen L. Pritchard, Legal Assistant

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